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Department of the Treasury

Washington, DC 20224

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PLR-128484-12

Date: December 12, 2012

Legend

Trust =

Subsidiary =

Company =

Manager =

Firm =

State A =

State B =

State C =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

a =

b =

Dear

This responds to a letter dated June 28, 2012, and subsequent correspondence submitted on behalf of Trust and Subsidiary. Trust requests an extension of time under section 301.9100-1 and section 301.9100-3 of the Procedure and Administration Regulations to make an election under section 856(c) of the Internal Revenue Code ("Code") to be treated as a real estate investment trust ("REIT") for the tax year ending on Date 6. In addition, Trust and Subsidiary request an extension of time under section 301.9100-1 and section 301.9100-3 to jointly file an election for Subsidiary to be treated as a taxable REIT subsidiary of Trust under section 856(l), effective as of Date 4.

FACTS

Trust was formed as a State A corporation in Year 2 to make investments in timberland properties. Trust attracted investors through a private placement offering using a REIT organizational structure. Upon successful completion of its offering, Trust contributed the proceeds to Company in exchange for an a percent interest.

Company was formed as a State A limited liability company in Year 2. Company is the actual owner of the timberland properties. On receipt of the proceeds from Trust, Company acquired timberland properties in State C and State B in Year 3 and Year 4.

Company disposes of timber located on the acquired properties through transactions structured as pay-as-cut contracts where the buyer purchases timber only as it is harvested. Company entered into these pay-as-cut contracts with its wholly owned subsidiary ("Subsidiary") and reports related income from the sale of eligible timber under section 631(b) where the one year holding period has been satisfied. Subsidiary harvests the timber and sells the resulting logs to unrelated purchasers.

Manager is a State B limited liability company organized in Year 1. Manager has a history of managing timberland properties and is the manager of Trust and Company. Manager owns a percent equity interest in Company.

Subsidiary is a State A limited liability company organized in Year 4. At the time of Subsidiary's organization, Subsidiary filed Form 8832, Entity Classification Election, and elected to be taxed as a corporation. Subsidiary was specifically created to be the taxable REIT subsidiary of Trust.

Trust's Private Placement Memorandum ("PPM") reflects that Trust will be taxed as a C corporation for an initial period of at least one year following the initial acquisition of timber properties and that after this initial period, Trust will make an election under section 856(c) to be treated as a REIT.

In Year 3, after Trust's initial timberland acquisition, Trust engaged a public accounting firm ("Firm") as its return preparer and tax advisor. In late Year 3, Firm began discussions with Trust regarding Trust's REIT election timeline.

Notwithstanding the timeline described in Trust's PPM, Firm suggested that Trust make its initial REIT election under section 856(c) for Trust's Year 3 tax year ending December 31, Year 3, and Trust agreed it might be appropriate for it to make its initial REIT election sooner than reflected in its PPM. Accordingly, Trust organized Subsidiary on Date 1. On Date 2, Trust and Subsidiary jointly filed Form 8875, Taxable REIT Subsidiary Election. Trust timely filed its federal income tax return for Year 3 by Date 3.

Notwithstanding Firm's suggestion to make its initial REIT election in Year 3, Trust filed Form 1120 for its Year 3 and Year 4 tax years.

Subsequently, miscommunications occurred between representatives of Firm and Trust, and, as a result, Firm did not prepare a new taxable REIT subsidiary election for Trust and Subsidiary to file for Year 5. More specifically, near the end of Year 5, it became apparent to Firm that a representative of Trust had provided a representative of Firm incorrect information regarding the Year 5 anticipated timber harvest.

Trust represents that during the Year 5 tax year, Trust intentionally avoided the sale of timber from newly acquired timber property, and had actively monitored Trust's income and asset tests pursuant to section 856(c) during the Year 5 tax year to ensure

compliance with the REIT provisions for the Year 5 tax year. Firm and Trust discussed the status of the REIT and taxable REIT subsidiary elections and Trust inquired whether automatic relief was available for a late-filed taxable REIT subsidiary election. Trust was informed that automatic relief was unavailable.

On Date 5, Trust and Subsidiary jointly filed a second taxable REIT subsidiary election to be effective . Firm prepared the Trust's tax return for Year 5 using Form 1120. On Date 7, the return was electronically filed. During the tax return preparation Trust received from its shareholders/investors very strong negative feedback concerning the delay in its anticipated REIT election because the delay was contrary to the prior representations made to investors. As a result, Trust began looking for other remedies to correct the delay in making the REIT election. On or about Date 8, Trust filed an amended return for the Year 5 tax year by filing Form 1120-REIT in which return Trust checked the box to identify its return as its amended return filed with respect to Year 5.

Furthermore, with respect to the election under section 856(c) of the Code, Trust makes the following additional representations:

1. The request for relief was filed by Trust before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust having a lower tax liability in the aggregate for all years to which the regulatory election applies than Trust would have had if the election had been timely made (taking into account the time value of money).
3. Trust did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Trust requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Trust did not choose to not file the election.

Moreover, with respect to the election under section 856(l) of the Code, Trust and Subsidiary make the following additional representations:

1. The request for relief was filed by Trust and Subsidiary before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory election

applies than that they would have had if the election had been timely made (taking into account the time value of money).

3. Trust and Subsidiary did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Trust and Subsidiary did not choose to not file the election.

In addition, affidavits on behalf of Trust and Subsidiary were provided with the submission, as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 856(c)(1) of the Code provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year, an election to be a REIT or has made such election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to section 1.856-2(b), the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the elections, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) of the Income Tax Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the information submitted and representations made, we conclude that Trust has satisfied the requirements for granting a reasonable extension of time to elect under section 856(c) to be treated as a REIT for its Year 5 tax year ending on Date 6. Accordingly, the election of REIT status that was made on the Form 1120-REIT Trust filed on or about Date 8 for its Year 5 tax year will be considered as timely made.

Moreover, we conclude that Trust and Subsidiary have shown good cause for granting a reasonable extension of time to file an election under section 856(l) for Subsidiary to be treated as a taxable REIT subsidiary of Trust. We further conclude that Date 4, which is the date on which Trust and Subsidiary intended the election to be effective, is the effective date of the election.

This ruling is limited to the timeliness of the filing of Trust's election under section 856(c) of the Code and Trust's and Subsidiary's election under section 856(l) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Trust otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a taxable REIT subsidiary of Trust under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Trust or Subsidiary is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,
Diana Imholtz
Diana Imholtz
Chief, Branch 1
Associate Chief Counsel
(Financial Institutions & Products)